

C. Remarks

1) The three independent claims are amended to point out that the claimed invention is drawn to an arrangement providing a measure of distance along a sensing body where the measure varies linearly with the distance. This is inherently a one-dimensional measurement – i.e., the invention provides measurement of distance along a straight line or a curve, where the line or curve is defined by some sort of sensing body having a finite width and extending between two electrodes.

The Hepworth reference describes an arrangement directed at providing a highly non-linear output (e.g., as shown in Fig. 4 therein) for determining the location of a single point – i.e., the mid-point of a wall stud – rather than for measuring the position of an object along a sensing body. Thus, Hepworth teaches away from Applicant's claimed subject matter.

As the CAFC has noted, "[i]t is insufficient that the prior art disclosed the components of the patented device, either separately or used in other combinations; there must be some teaching, suggestion, or incentive to make the combination made by the inventor." Northern Telecom, Inc. v. Datapoint Corp., 15 USPQ2d 1321, 1323 (CAFC 1990). Thus the Examiner "cannot pick and choose among the individual elements of assorted prior art references to recreate the claimed invention," but "has the burden to show some teaching or suggestion in the references to support their use in the particular claimed combination." Smithkline Diagnostics Inc. v. Helena Laboratories Corp., 8 USPQ2d 1468, 1475 (CAFC 1988). Inasmuch as the Hepworth reference is related to systems for sensing a specific condition (classified in Class 340, subclass 540) it is not clear that someone having ordinary technical skill in subject application's art of measuring distance by capacitive means (Class 324, subclass 662), would be aware of the Hepworth teaching, let alone be motivated to combine it with the teachings of the references by Philipp and Shahoian et al.

These amendments and arguments are believed to traverse the Examiner's rejection of all pending claims under 35 USC §103(a) over Philipp '707 in view of the cited combinations of the Shahoian et al., Hepworth, Philipp'036, Brandt and Bloom references. Reconsideration is

requested.

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